



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN**

**GERALD C. MANN
ATTORNEY GENERAL**

Handwritten: 1 Co

Honorable Wallace Scott
Securities Commissioner
Secretary of State's Office
Austin, Texas

Dear Sir:

Opinion No. O-2415

Re: Whether the John Hancock Mutual Insurance Company and the Jefferson Standard Life, Health and Accident Insurance Company by negotiation of loans of their own money, become subject to the Real Estate Dealers' License Act?

Your letter of May 24, 1940, requesting an opinion of this Department on the question as is herein stated has been received.

We quote from your letter as follows:

"On February 1, 1940 this office requested the opinion of your department as to whether companies such as the John Hancock Mutual and Jefferson Standard, etc., are subject to the Real Estate Dealers' License Act. Your department, in Opinion No. O-1925, stated:

'The provisions of the above mentioned act do not apply to, and the terms "Real Estate Dealer" and "Real Estate Salesman" as above defined by the statute, do not include any person or company who, as owner or lessor, perform any of the acts set out in Section 2, Subdivision (a) with reference

to property owned or leased by them, or to the regular employees thereof with reference to the property owned or leased by such person or company where such acts are performed in the regular course of, or as incident to, the management of such property and the investment therein, unless such person or company is engaged in the business of buying, selling, exchanging, leasing, or renting of property and holding himself or itself out as a full or part-time dealer in real estate. We believe that the buying, selling, exchanging, leasing, or renting of property obtained under foreclosure proceedings by the companies above named or like companies would be acts performed in the regular course of, or as incident to, the management of such property and the investment therein.

'Therefore, you are respectfully advised that it is the opinion of this department that the John Hancock Mutual Insurance Company and the Jefferson Standard Life, Health and Accident Insurance Company and like companies when engaged in the above mentioned acts would not be subject to the Real Estate Dealers License Act.'

"This department would now appreciate your opinion as to whether or not the exemption in subdivision (a) of Section 2 with reference to property owned or leased by them or to the regular employees thereof with reference to property owned or leased by such person or company where such acts are performed in the regular course of or as pertaining to the management of such property and investment therein extends to the negotiation of loans by such company. You state in your opinion as quoted above that such companies would not be subject to the Act when engaged in buying, selling, exchanging, leasing or renting of property obtained under foreclosure proceedings by such company.

"Such companies in addition to the activities referred to in your opinion quoted above are also engaged in the solicitation of loans, the money lent being money of such companies.

"We would, therefore, appreciate your advice now as to whether by negotiation of loans of their own money, they become subject to the Real Estate Dealers' License Act?"

The applicable portions of House Bill No. 17, as passed by the Forty-sixth Legislature, commonly known and cited as "The Real Estate Dealers' License Act" are quoted in our opinion No. 0-1925. We are enclosing a copy of this opinion and will not quote the applicable portions thereof above referred to.

Opinion No. 0-1925, supra, holds that the buying, selling, exchanging, leasing, or renting of property obtained under foreclosure proceedings by the companies above named or like companies would be acts performed in the regular course, or as incident to, the management of such property and the investment therein and that the John Hancock Mutual Insurance Company and the Jefferson Standard Life, Health and Accident Insurance Company and like companies when engaged in the above mentioned acts would not be subject to the Real Estate Dealers' License Act.

In the request we now have under consideration, we have a question different from the question presented in the original inquiry in Opinion No. 0-1925 and one that was not passed upon in that opinion.

Subdivision (a) of Section 2 of House Bill No. 17, as passed by the Forty-sixth Legislature, supra, among other things specifically provides that:

"The term 'Real Estate Dealer' shall include every person or company, other than a salesman, and licensed and registered attorneys, who for another or others for compensation or other valuable consideration, . . . negotiates, or offers, or attempts, or agrees to negotiate a loan, secured or to be secured by mortgage or other incumbrance upon the transfer of real estate; . . ."

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It will be noted under the above quoted provision of House Bill No. 17, Acts of the Forty-sixth Legislature, supra, that the term "Real Estate Dealer" includes every person or company, other than a salesman, and licensed and registered attorneys, who for another or others for compensation or other valuable consideration, negotiates, or offers, or attempts, or agrees to negotiate a loan, secured or to be secured by mortgage or other incumbrance upon the real estate are included within the definition of the term "Real Estate Dealer". We are of the opinion that sub-division (a) of Section 2 of House Bill No. 17, supra, clearly does not by its terms include a person or company who negotiates loans of their own money.

Therefore, your question is respectfully answered in the negative.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

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Encl.

APPROVED JUN 7, 1940

Gertrude Mann

ATTORNEY GENERAL OF TEXAS

